

## SUMMARY SHEET

### I. Description of Item:

**RESOLUTION TO RESCIND PRIOR APPROVAL AT 25% OF AD VALOREM TAXES AND APPROVE A NEW AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO SHIELD, INC, a Tennessee not-for-profit corporation, AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann. §67-5-207, et seq., AT AN AMOUNT OF \$5 PER UNIT PER MONTH.**

SPONSORED BY COMMISSIONER JAMES M. HARVEY

### II. Source and Amount of Funding:

Recoupment of Costs Agreement will reimburse Shelby County for cost of providing improvements, facilities and services to the housing development concurrent with State Board of Equalization ("SBOE") approval of tax exempt status conditioned upon Shield Inc. providing permanent housing to low income elderly and handicap residents.

### III. Contract Items:

Tenn. Code Ann. §67-5-207(a)(2) requires any qualified project receiving a tax exemption to pay any local government for improvements, facilities and services rendered. Governments are limited to charging no more than the actual costs of providing the improvements, facilities and services. The project must be exempt from federal taxes under the Internal Revenue Code, and qualify to provide housing under federal HUD, HCD, McKinney-Vento Homeless Act, HOME Investment Partnerships Program, or the state-funded Housing Opportunities (HOUSE) Program. The SBOE staff deemed the initial cost determination as solely a local matter by language of the statute.

### IV. Additional Information Relevant to approval of this item:

Previously, the City of Memphis and Shelby County, by inter-government agreement, charged this type housing project a total fee of Ten (\$10) Dollars per unit per month divided equally at Five (\$5) Dollars each City and County. The City of Memphis delegated its authority to enter into these agreements to the City's HEHFB by Item 57, Resolution on December 4, 2007. The City also unilaterally changed the methodology and rate of cost to 25% of the amount that the ad valorem taxes would have been. The 25% calculation was adopted from a rate charged by Davidson County Metro Government for this type project. The Board of Commissioners of Shelby County adopted the 25% of normal taxes rate SOLELY on this project at its September 22, 2008 meeting based upon the urgent request of Shield, Inc to approve the disputed cost allocation in order for Shield, Inc to meet a funding deadline with the HOME Loan Program. Shield, Inc now asks that the cost allocation be adjusted to the amount approved by the County Commissioners at \$5 per unit per month, and make the rate

consistent with the approval of a similar project at the Board of Commissioner's meeting on October 6, 2008, the going forward rate applicable to this and similar projects. Projects must qualify and remain eligible by complying with state and federal discrimination laws, or may be revoked under T.C.A. §67-5-212.

ITEM # \_\_\_\_\_

PREPARED BY: THOMAS WILLIAMS

COMMISSIONER \_\_\_\_\_

APPROVED BY: THOMAS WILLIAMS

**RESOLUTION TO RESCIND PRIOR APPROVAL AT 25% OF AD VALOREM TAXES AND APPROVE A NEW AGREEMENT TO RECOUP THE COST OF PROVIDING IMPROVEMENTS, FACILITIES AND SERVICE TO SHIELD, INC,** a Tennessee not-for-profit corporation, **AS REQUIRED BY APPLICABLE TAX EXEMPTION STATUTE, Tenn. Code Ann. §67-5-207, et seq., AT AN AMOUNT OF \$5 PER UNIT PER MONTH SPONSORED BY COMMISSIONER JAMES M. HARVEY**

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**WHEREAS**, T.C.A. §67-5-207 states that property of Tennessee not-for-profit corporations either financed under Section 202 of the National Housing Act of 1959, or McKinney-Vento Homeless Assistance Act, or funded under the HOME Investment Partnership Program and used for housing for low income elderly, handicapped, or homeless persons may be exempted from real property taxes, as long as such property complies with the provisions of said Section; and

**WHEREAS**, T.C.A. §67-5-207(a)(2) provides for recoupment of providing essential services agreement payments in lieu of real property taxes to be made by property granted an exemption under this Section by the State of Tennessee Board of Equalization, in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the exempt property; and

**WHEREAS**, Shield, Inc., a qualifying Tennessee not-for-profit corporation owning real property located at 2450 Ketchum Cove, Memphis, Shelby County, Tennessee (the "Property") has applied to the State Board of Equalization for an exemption from real property taxes for the Property and said exemption is conditioned upon certain conditions, including filing of a prior agreement for payment in lieu of real property taxes to the County; and

**WHEREAS**, the Board of Commissioners adopted a Resolution, Item No. 25 on September 22, 2008 approving an Agreement between Shield, Inc. and Shelby County, Tennessee whereby Shield, Inc. agreed to pay 25% of the ad valorem taxes that would have been due on the subject property in order for County to recoup its costs for improvement, facilities and services provided to Shield, Inc.; and

**WHEREAS**, prior agreements of this type were entered into jointly by the City of Memphis, Shelby county and the exemption applicant, and by resolution adopted and approved on December 4, 2007, the City Council of the City of Memphis, Tennessee delegated its authority to enter similar agreements, pursuant to T.C.A. §67-5-207, et seq. to The Health, Educational and Housing Facility Board of the City of Memphis (the "City"), said delegation conditioned upon the exemption applicant paying twenty-five (25%) of the ad valorem taxes that would have been due, exceeding the amount charged by Shelby County.

**WHEREAS**, the Board of Commissioners of Shelby County adjusted the cost of recoupment on a similar project, and reinstated the rate of recoupment to Five (\$5) per unit per month in Resolution for Item No. 21 at the October 6, 2008 meeting, and Shield, Inc. is now requesting the Board of Commissioners of Shelby County to rescind Item No. 25 on September 22, 2008 and adjust the rate of recoupment to Five (\$5) per unit per month for 2450 Ketchum Cove.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE COUNTY OF SHELBY, TENNESSEE, that:**

1. The prior Resolution approving the Recoupment Agreement at a rate of 25% of the ad valorem taxes that would have been due is hereby rescinded. The alternative payment Agreement designated by the State Board as a "Payment in Lieu of Taxes", and designated herein as an Agreement to Recoup the Cost of Providing Improvements, Facilities and Services for Shield, Inc., is hereby approved at a rate of Five (\$5) Dollars per unit per month.

2. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, Shield, Inc. shall pay to the County taxing authority for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) an amount equaling the estimated costs incurred by the County to provide improvements, facilities and/or services to the Property, equal to Five (\$5) Dollars per unit per month as of the effective date of this agreement in lieu of real property taxes.

3. Within thirty (30) days of the granting of the tax exemption, Shield, Inc. shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

4. Subject to Paragraph 5 below, the recoupment of costs required by this agreement are to be made on or before February 28th of each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

5. The recoupment of costs provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. §67-5-207.

6. The parties to this Agreement acknowledge that the County's costs to provide improvements, facilities and/or services to the Property may become greater than the amount of the recoupment of costs made pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept these payments in lieu of real property tax, and in order to lessen the burden on the County of providing improvements, facilities or services to Shield, Inc, then Shield, Inc. shall cooperate fully with the County to re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

7. The parties agree that the recoupment of costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the County in the future.

8. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Tennessee.

9. **BE IT FURTHER RESOLVED**, That the County Mayor is hereby authorized to execute all documents necessary to rescind any prior approval of an Agreement to recoup the cost of providing improvements, facilities and services for Shield, Inc. housing facility at 2450 Ketchum cove, and to enter an Agreement for the same purpose at a cost recoupment rate of Five (\$5) Dollars per unit per month, said Agreement attached hereto as Exhibit "A".

\_\_\_\_\_  
A C Wharton, Jr., Shelby County Mayor

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Clerk of County Commission

ADOPTED: \_\_\_\_\_

## **AGREEMENT FOR PAYMENTS IN LIEU OF TAXES**

THIS AGREEMENT is made and entered into by and among Shield, Inc., a Tennessee not-for-profit corporation, and the County of Shelby (the "County"), on this the \_\_\_\_\_ of \_\_\_\_\_, 2008, for payments by Shield, Inc. allowing the County to recoup the County's costs of providing improvements, facilities and services to Shield, Inc. in-lieu-of real property tax, said Agreement effective upon tax exemption by the State of Tennessee. This Agreement is void unless and until said exemption is granted by the State.

WHEREAS, Shield, Inc. is the owner of a certain parcel of real property particularly described on Exhibit "A" hereto, which property is located at 2450--2454 Ketchum Cove, Memphis, Shelby County, Tennessee, and which is identified in the office of the County Assessor under Tax Parcel Number 0601370000207 (the "Property"); and

WHEREAS, the Property is improved as a 65 unit one or two bedroom apartment building for elderly and handicapped persons, and operates under a grant from the Memphis Div. of Housing and Urban Development's Shelter Plus Care (S+C) Program, authorized by Title IV of the McKinney-Vento Homeless Assistance Act and 24 CFR Part 582 for HUD funded rental assistance and is also subject to a Federal Home Loan Bank (Federal Housing Finance Board) grant and/or loan, and is located on the Property described in Exhibit "A"; and

WHEREAS, T.C.A. Section 67-5-207 exempts from real property taxes property of Tennessee not-for-profit corporations qualifying under the McKinney-Vento Act and HOME Investment , upon compliance with law and State Board of Equalization ("SBOE") rules; and

WHEREAS, T.C.A. Section 67-5-207 (a) (2) provides for payments in lieu of real property taxes to be made by property owners granted an exemption under this Section in amounts not to exceed the estimated costs incurred by municipalities or counties to provide improvements, facilities and/or services to the property upon exemption; and

WHEREAS, Shield, Inc. has applied to the SBOE for an exemption from real property taxes for the Property, and said exemption would be conditioned upon certain conditions, including the filing of an agreement with the State Board of Equalization for payments allowing local governments to recoup costs of improvement, facilities and services; and

WHEREAS, the County agrees that Shield, Inc. complies with the conditions and intent of the statute, and that the Property and its intended use complies with the provisions of T.C.A. Section 67-5-207; however, the exemption of the Property is subject to the determination of the State Board of Equalization. Therefore, this Agreement to reimburse the County for improvements, facilities and services is conditioned upon the approval of the exemption. Otherwise, unless the Property is otherwise exempted under some other means, including a PILOT agreement and leaseback by a governmental entity, then the normal taxes shall apply.; and

WHEREAS, Shield, Inc. and the County desire to enter this Agreement requiring Shield, Inc. to reimburse the County for improvements, facilities and services provided to the Property in accordance with T.C.A. Section 67-5-207(a)(2).

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS SET OUT HEREIN**, the receipt and sufficiency of such being hereby acknowledged, the parties agree as follows:

1. Beginning with the effective date of the real property exemption for the Property granted by the State Board of Equalization, Shield, Inc. shall pay to the County for each calendar year (and pro rata for any part of a calendar year for which the tax exemption is in effect) the total sum of **\$3,900** (an amount equal to Five (\$5) per month per unit) to reimburse the County for the costs of providing improvements, facilities and services to the Property.

2. Within thirty (30) days of the granting of the tax exemption by the SBOE, Shield, Inc. shall pay to the County all outstanding real property taxes on the Property for periods prior to the date of the exemption, if any.

3. Subject to Paragraph 4 below, the payments in lieu of tax required by this Agreement are to be made on or before February 28<sup>th</sup> each year. Any payments in lieu of tax not made when due shall thereafter bear interest at the highest rate allowable under applicable law.

4. The payments in lieu of tax provided for herein shall continue to be due and payable in the amounts specified herein until the date on which the Property is no longer eligible for real property tax exemption under T.C.A. Section 67-5-207.

5. The parties to this Agreement acknowledge that the costs to the County to provide improvements, facilities and/or services to the Property may be greater than the amount of recoupment specified herein or as amended or modified pursuant to this Agreement, and that such costs may increase substantially during the time the Property is entitled to exemption from real property taxes. In consideration of the agreement by the County to accept payments in lieu of real property tax in amounts less than such costs, and in order to lessen the burden on the County of providing improvements, facilities and/or services to Shield, Inc., Shield, Inc. agrees that it will cooperate fully with the County to examine and re-negotiate the terms of this agreement every three (3) years from the date of this agreement.

6. The parties agree that the payments in lieu of taxes reimbursing the County for costs provided for herein are entirely separate from, and in addition to, any payments that may be required for garbage fees, sewer fees or other similar fees that may be imposed on all residents of the City or County in the future.

7. This Agreement shall be governed by, and construed in accordance with, the law of the State of Tennessee, and shall further inure to the benefit of, and shall be enforceable by and against, the parties hereto, their respective successors and assigns.

8. Shield, Inc. represents and warrants that it is a not-for-profit corporation duly organized and incorporated in the State of Tennessee; that it has received, and at all time during the period of this Agreement, will maintain federal tax exempt status under Section 501(c)(3) or other sections of the Internal Revenue Code of 1986, as amended; and that the Property is and shall remain, at all times relevant during the period of this Agreement, in full compliance with the HUD Agreements, Deeds of trusts and other documents or qualifying conditions under Tenn. Code Annotated § 67-5-207, and other applicable law affecting continued eligibility for exemption from real property taxes or revocation conditions under Tenn. Code Annotated § 67-5-212.

**IN WITNESS WHEREOF**, Shield, Inc. and the County have executed this Agreement the day and year first written above to be effective upon and conditioned upon the Tennessee State Board of Equalization granting a tax exemption pursuant to Tenn. Code Ann. § 67-5-207 for the Property.

**SHIELD, INC.**

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
SECRETARY

**COUNTY OF SHELBY, TENNESSEE**

BY: \_\_\_\_\_  
A C WHARTON, JR., COUNTY MAYOR

ATTEST:

\_\_\_\_\_  
CLERK OF COMMISSION

APPROVED AS TO FORM:

\_\_\_\_\_  
ASST. COUNTY ATTORNEY

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